



THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515/281-5164
FACSIMILE: 515/281-4209

October 19, 2007

Judy Meyer
State Appeal Board
Department of Management
Capitol
LOCAL

Re: Siggins, et al. vs. Vilsack, et al.
Polk Co. Case No. EQCL53324
Settlement with Mark Jacobs, d/b/a B & B Games

Dear Judy:

The Defendants have agreed to settle litigation brought by one of the Plaintiffs in the above-referenced lawsuit, Mark Jacobs, d/b/a B & B Games. This case arises out of the legislature's elimination of the Lottery's TouchPlay program. Mark Jacobs, d/b/a B & B Games, asserted various constitutional, equitable, contract and quasi-contract theories against the Defendants asserting, among other things, that the Defendants had made agreements with Plaintiff and/or had made assurances to Plaintiff with respect to the Plaintiff becoming involved in the TouchPlay program.

In light of the complexity of the case, the potential exposure to the State, as well as other pending litigation involving TouchPlay, it was decided to attempt to settle the matter. The parties participated in extensive negotiations and were able to come to a settlement of all claims made by Mark Jacobs, d/b/a B & B Games, in this case. A copy of the Settlement Agreement and Release, executed by the parties, is being provided with this letter.

Under the terms of the settlement, Mark Jacobs, d/b/a B & B Games, will be paid the total sum of \$388,000 (Three Hundred Eighty-Eight Thousand Dollars). The warrant for this settlement must be made out to Mark Jacobs, d/b/a B & B Games; Terry Moss; Moss Distributing, Inc.; and LaMarca & Landry P.C., Client Trust Account.

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The Social Security and/or Federal ID number for the payees are:

Mark Jacobs, d/b/a B & B Games
Terry Moss
Moss Distributing, Inc.
LaMarca & Landry P.C., Client Trust Account

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Time is of the essence, and we would appreciate all efforts to expedite receiving the settlement warrant. Please contact our office as soon as the warrant is available and we will make arrangements to pick it up. Should you have any questions, please feel free to contact me.

Sincerely,

Julie F. Pottorff by *DVE*
JULIE F. POTTORFF
Deputy Attorney General

Enclosure

cc: Barrett Harvey, DAS
Pre-Audit, 3rd Floor, Hoover Bldg.

Approved:

[Signature]

Scott Idleman
Special Assistant Attorney General

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into effective as of the 17 day of October, 2007 (the "Effective Date"), by and between MARK JACOBS d/b/a B & B GAMES (hereinafter Jacobs") on the one hand, and THOMAS J. VILSACK, IN HIS OFFICIAL CAPACITY, THOMAS J. MILLER, IN HIS OFFICIAL CAPACITY, MARK R. SCHULING, IN HIS OFFICIAL CAPACITY, KEVIN W. TECHAU, IN HIS OFFICIAL CAPACITY, DR. EDWARD STANEK, IN HIS OFFICIAL CAPACITY, the IOWA LOTTERY AUTHORITY and the STATE OF IOWA (hereinafter collectively the "State") on the other hand.

WHEREAS, Jacobs, and the State are presently parties to a lawsuit pending before the Iowa District Court for Polk County, captioned as Jeffrey A. Siggins et al v. Thomas J. Vilsack et al., Case No. EQ CL 53324 (hereinafter the "Lawsuit"), which involves disputed issues of law and fact; and

WHEREAS, the parties desire to fully settle any and all claims, charges, actions, causes of action or disputed issues of law and/or fact that have been raised or could be raised by any of the parties regarding Jacobs' involvement in the TouchPlay program and wish to reduce their agreement to writing;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Payment by State. The parties hereto agree that in consideration of the mutual promises and conditions contained herein, the State shall pay Jacobs the sum of Three Hundred Eighty-Eight Thousand Dollars (\$388,000.00). Payment shall be made by a check payable to Jacobs, Terry Moss, Moss Distributing and LaMarca & Landry P.C. Client Trust Account. Payment shall be made upon approval of the payment by the State Appeal Board. Payment shall be made within thirty (30) days following the approval of the State Appeal Board. The Parties agree that approval and payment by the State Appeal Board is a condition precedent for this Agreement. The Attorney General's Office agrees to recommend approval and payment of this amount to the State Appeal Board. Should the State Appeal Board not approve Jacobs' claim as submitted, the parties agree that they will proceed with the Lawsuit rather than undertake any appeals of the Appeal Board's decision or other administrative remedies, and that the failure of the Appeal Board to approve Jacobs' claim as submitted shall not have preclusive effect on any claims or defenses of the Parties in this lawsuit.

2. Release and Discharge.

a. Upon receipt by Jacobs of the amount set forth in paragraph i above, each Party to this Agreement shall mutually and completely release and forever discharge each of the other Parties, whether in an individual capacity, official capacity, or any other capacity, from any and all existing claims, demands, obligations, causes of action, damages, costs, expenses and compensation of any nature whatsoever, be they direct or indirect, in law

or in equity, whether known or unknown, which each Party may have had, presently has, or may have in the future against the other relating to the parties' participation in the TouchPlay program, or any ownership or operation of TouchPlay machines.

b. Said complete release and discharge shall apply equally to past, present and future officers, directors, stockholders, members, subsidiaries, parent companies, affiliates, partners, insurers, predecessors and successors in interest, departments, agencies, officials, and board members of any Party. The foregoing release and discharge shall be fully binding upon all the Parties, their agents, assigns and successors.

c. The Parties agree that this release and discharge covers all injuries and damages, whether known or not, and which may hereafter appear or develop arising from the matters released through this agreement.

d. The Parties agree that this Release is executed as a compromise settlement of a disputed claim, liability for which is expressly denied, and the payment of the above sum does not constitute an admission of liability on the part of any person or entity.

3. Dismissal By Jacobs. Immediately after receipt of the payment set forth in paragraph 1 above, Jacobs agrees to file a Dismissal With Prejudice of his claims in the Lawsuit in the Iowa District Court for Polk County. The parties agree to pay their own costs and fees. Jacobs will provide the State with a file-stamped copy of the Dismissal after it is filed.

4. Moss Limited Release. Jacobs agrees that as apart of this Agreement, Mark Jacobs will cause Terry Moss and Moss Distributing to execute a limited release in a form reasonably acceptable to the State waiving only those claims Terry Moss or Moss Distributing may have or may ever claim to have by virtue of having been damaged by the purchase, lease, or operation of TouchPlay machines solely by Mark Jacobs or B & B Games, whether Terry Moss or Moss Distributing claim such cause of action through tort, contract, subrogation, or any other legal theory. No other claims shall be released by Terry Moss or Moss Distributing. This release shall in no way release or diminish any other claims Terry Moss and/or Moss Distributing, Inc. now have or may have against Thomas J. Vilsack, in his official capacity, Thomas J. Miller, in his official capacity, Mark R. Schuling, in his official capacity, Kevin W. Techau, in his official capacity, Dr. Edward Stanek, in his official capacity, the Iowa Lottery Authority and the State of Iowa. The Parties agree that execution of the release by Terry Moss and Moss Distributing in a form reasonably acceptable to the State is a condition precedent for this Agreement. Upon execution of this limited accommodation release by Terry Moss and Moss Distributing, Jacobs will cause the executed release to be delivered to the attorneys for the State.

5. Ongoing Cooperation. Jacobs agrees that upon execution of this Agreement, or within a reasonable time thereafter as agreed by the Parties, Jacobs will continue to make available all documents and things responsive to the Request for Production issued by the State

and the Lottery in the Lawsuit. Jacobs agrees to permit the Attorney General's Office to review all non-privileged correspondence and electronic mail responsive to the State's Request for Production. The State agrees to identify the electronic mail and correspondence which are to be copied and provided pursuant to this provision. The State and the Lottery agree to provide reasonable reimbursement for the copying charges relating to any documents provided by Jacobs pursuant to this provision.

6. Integrated Agreement; Severability. This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof. No other prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties relating to the subject matter hereof and not embodied in this Agreement shall be of any force or effect. This Agreement shall not be modified except in a writing signed by all parties hereto. If any provision of this Agreement shall for any reason be held to be invalid, unenforceable, or contrary to public policy, whether in whole or in part, the remaining provisions shall not be affected by such holding.

7. Binding Effect. This Agreement is binding upon, and shall insure to the benefit of, the parties hereto and their respective heirs, representatives, successors and assigns.

8. Construction Against Party Drafting. The parties acknowledge that all parties, through their legal counsel, played an equal role in drafting and/or had an equal opportunity to review and/or modify the provisions set forth in this Agreement. Thus, in the event of any misunderstanding, ambiguity, or dispute concerning this Agreement's provisions, or interpretations, no rule of construction shall be applied that would result in having this Agreement interpreted against any party.

9. Review by Parties and Counsel. All parties acknowledge that they have carefully read this Agreement, and fully understand its meaning and intent. The parties also acknowledge that they have had the Agreement explained to them by their counsel, and they understand its legal consequences. The parties agree to all the terms of the Agreement, and are voluntarily signing below. The only consideration for the parties signing the Agreement are the terms stated herein, and no other promises or representations of any kind have been made by any person or entity whatsoever to cause them to sign this Agreement.

10. Applicable Law. This Agreement shall be governed by the laws of the State of Iowa. The parties, by their execution of this Agreement, submit to the jurisdiction of the courts of the State of Iowa and agree that venue shall be exclusively in Polk County, Iowa.

11. Captions. The section captions herein are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections nor in any way affect this Agreement.

12. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall together constitute one and the same instrument and shall become effective when one or more counterparts have been signed by each and every party hereto and delivered to each and every other party hereto.

**PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES A RELEASE
OF ALL KNOWN AND UNKNOWN CLAIMS.**

IN WITNESS WHEREOF, the parties hereto have duly executed this **SETTLEMENT
AGREEMENT** effective as of the date first above written.

MARK JACOBS d/b/a B & B GAMES

By: _____

Mark Jacobs

Date: _____

10/17/07

STATE OF IOWA ET AL.

By: _____

Thomas J. Miller,
Attorney General

Date: _____

Approved as to form:

Julie F. Pottorff
Jeffrey C. Peterzalek
Deputy Attorney General
Hoover Bldg., 2nd Floor
1305 E. Walnut
Des Moines, IA 50319

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ATTORNEYS FOR STATE

Charles Pritchard

Charles Pritchard
Attorney for Mark Jacobs